

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

MAY 21 2002

FILED

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE,

CONSENT AGREEMENT

PETITIONER,

VS.

TOWER TITLE & ESCROW  
COMPANY, JOSEPH W. McNAMARA,  
JR. AND JULIE M. HUDKINS,

CAUSE NO. A-1464

May 31, 2002 ACCT# 8521 \$7,000.00  
NO-INVOICE 91349 TRANS 1035052  
TOWER TITLE & ESCROW COMPANY  
CHECK# 2865

RESPONDENTS.

In order to resolve this matter, the Nebraska Department of Insurance ("Department"), by and through its attorney Christine Neighbors, and Tower Title & Escrow Company, and its designated agents, Joseph W. McNamara, Jr. and Julie M. Hudkins (collectively "Respondents") mutually and individually stipulate and agree as follows:

JURISDICTION

1. The Department has jurisdiction over the subject matter and Respondents pursuant to Neb.Rev.Stat. §44-101.01 and §44-4001, et seq. and §44-4047 et seq. (eff. 9-1-01).
2. Tower Title & Escrow Company ("Respondent Tower") is a licensed title insurance agency doing business in Nebraska under the laws of Nebraska at all times material hereto.
3. Joseph W. McNamara, Jr., ("Respondent McNamara"), is President of Respondent Tower and a licensed title insurance agent. Respondent McNamara is a designated producer for Respondent Tower pursuant to Neb.Rev.Stat. §44-4014 and §44-4053 (eff. 9-1-01). As such, Respondent McNamara has full responsibility for the conduct of all business

transactions of the insurance agency within the state pursuant to Neb.Rev.Stat. §44-4014 and §44-4053 (eff. 9-1-01).

4. Julie M. Hudkins, ("Respondent Hudkins") is a licensed title insurance agent. Respondent Hudkins is a designated producer for Respondent Tower pursuant to Neb.Rev.Stat. §44-4014 and §44-4053 (eff. 9-1-01). As such, Respondent Hudkins has full responsibility for the conduct of all business transactions of the insurance agency within the state pursuant to §44-4014 and §44-4053 (eff. 9-1-01).

#### STIPULATION OF FACT

1. The Department initiated this administrative proceeding by filing a Petition and Notice of Hearing styled State of Nebraska Department of Insurance vs. Tower Title & Escrow Company, Joseph W. McNamara, Jr., and Julie M. Hudkins on March 14, 2002. A copy of such Petition and Notice of Hearing was served upon the Respondents by certified mail at the address of 450 Regency Parkway Drive, Omaha, NE 68114 and 13924 Gold Circle, Omaha, NE 68144.

2. The Petition alleges, beginning with paragraph 6, Respondents violated Neb.Rev.Stat. §44-4028(1), (11), and §44-4059(1)(b) (eff. 9-1-01) and the Title Insurance Agent and Unfair Trade Practices Acts by conduct as follows:

- a. Respondents violated Neb.Rev.Stat. §44-19,114(1) by failing to amend, with the agreement of the title insurer, the agency contract to set forth the counties in which Respondents received authorization from the title insurer to search. Said counties reported on the written agreement reviewed by the Department were not accurate.
- b. Respondents violated Neb.Rev.Stat. §44-19,114(3) as follows:
  1. Respondents failed to timely issue title insurance policies on approximately 814 files herein all requirements for policy issuance were met. Respondents had received payment of the insurance premium associated with said 814 files. By failing to issue the title insurance policies, Respondents have not remitted premium to the title insurer.

2. Respondents failed to implement procedures to follow-up on approximately 580 files that were awaiting additional information before the title insurance policy could be issued. Respondents had received payment of the insurance premium associated with said 580 files. By failing to implement follow-up procedures, Respondents have not performed the duties required to issue the title insurance policy and remit premium to the title insurer.
- c. Respondents violated Neb.Rev.Stat. §44-19,114(6) as follows:
1. Respondents did not have procedures in place to identify which files are escrow only files and which files have title insurance associated with the transaction. Without appropriate tracking, the Department could not identify, in a readily accessible form, those files involving title insurance.
  2. Respondents did not have procedures in place to record the date that a title insurance policy was typed or to record the date that a title insurance policy was issued to the insured. Without this information, the Department was unable to verify whether title insurance policies were issued.
- d. Respondents violated Neb.Rev.Stat. §44-4028(11) and §44-4059(1)(h) (eff. 9-1-01) by collecting title insurance premium on approximately 814 transactions and failing to issue title insurance policies to the insureds. In addition, Respondents also violated Neb.Rev.Stat. §44-4028(11) and §44-4059(1)(h) (eff. 9-1-01) by collecting title insurance premium on approximately 580 files then failing to implement any procedure to follow-up on those files to ensure that all documentation was received so that the title insurance policies could be issued.
- e. Respondents failed to file the Financial Disclosure Statement required pursuant to Neb.Rev.Stat. §44-19,112(3) with the Department when there was a change in the ownership interest of Tower Title & Escrow Company on January 1, 2001.
- f. Pursuant to Neb.Rev.Stat. §44-19,121, each violation of the Title Insurance Agent Act and any rules and regulations adopted and promulgated there under shall be an unfair trade practice in the business of insurance subject to the Unfair Trade Practices Act.
3. Respondents were informed of their right to a public hearing. Respondents waive that right and enter into this Consent Order freely and voluntarily. Respondents understand and

acknowledge that by waiving the right to a public hearing, Respondents also waive the right to confront witnesses, the production of evidence, and judicial review.

4. Respondents neither admit nor deny the allegations contained in the Petition and referenced in Paragraph 2 above of this Consent Order but believe, in light of the time and expense involved in an administrative hearing, it is in the best interest of Respondents and the Department to enter into a Consent order.

#### CONCLUSIONS OF LAW

Respondents' conduct as alleged above in Paragraph 2 (a-f) above constitutes violations of Neb.Rev.Stat. §44-4028(1),(11), and §44-4059(1)(b) (eff. 9-1-01), and the Title Insurance Agent and Unfair Trade Practices Acts. However, during the course of this investigation, Respondents fully cooperated with the Department's requests for information. Following the issuance of the Market Conduct Examination Report, Respondents filed the Financial Disclosure Statement indicating a change in ownership interest and provided the Department with a copy of the amendment to Respondent Tower's Underwriting Agreement correcting the counties in which the agent may issue policies of title insurance. In compliance with the provisions of the Underwriting Agreement, Respondent Tower remitted and continues to remit monthly on policies issued by it in the preceding month. Respondents have implemented a plan to eliminate the backlog of policies to be issued and are filing quarterly reports with the Department. The Respondents will continue to file quarterly reports until the backlog is eliminated and all premiums due are paid to the title insurer. The first report submitted by Respondents on March 31, 2002 reflects a total of 764 policies issued. Respondent Tower has hired three additional employees for its policy department. Respondent Tower has implemented procedures to follow-up on files awaiting information before title policies can be issued. The files are systematically

checked and re-checked and follow up activities are documented in the file. Respondent Tower has revised its system of logging files to designate "escrow only", "title only" or "title and escrow". In addition, Respondent Tower now documents the date the title policy was typed and mailed in the title insurance file by using a computer generated delivery sheet.

CONSENT ORDER

It is therefore ordered by the Director of Insurance and agreed to by Respondents Tower Title & Escrow Company, Joseph W. McNamara, Jr., and Julie M. Hudkins, that Respondents agree to pay an administrative fine totaling \$7,000. In addition, Respondent Tower agrees to pay the reasonable costs of the market conduct examination and the required follow-up visits, if necessary, and reviews by the market conduct examiner(s) for the reports filed with the Department. It is further ordered that if full payment of the administrative fine is not received on or before 30 days from the date the Director of Insurance signs this Consent Order, grounds shall exist for a hearing to be called wherein Respondents shall show cause as to why their Nebraska insurance producer and agency licenses should not be revoked. The Nebraska Department of Insurance shall retain jurisdiction of this matter for the purpose of enabling the Respondents or the Department to make application for such further orders as may be necessary.

In witness of their intention to be bound by this Consent Order, each party executed this document by subscribing his or her signature below.

State of Nebraska Department of Insurance

Tower Title & Escrow Company

By: Christine M. Neighbors  
Counsel  
5/20/02  
Date

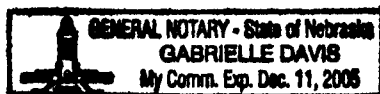
By: Joseph W. McNamara, Jr.  
Joseph W. McNamara, Jr., President

  
Joseph W. McNamara, Jr.

  
Julie M. Hudkins

State of Nebraska           )  
  ) ss.  
County of Douglas         )

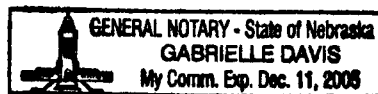
On this 16 day of May, 2002, Joseph W. McNamara, Jr., President of Tower Title & Escrow Company, personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be his/her voluntary act and deed.




  
Notary Public

State of Nebraska           )  
  ) ss.  
County of Douglas         )

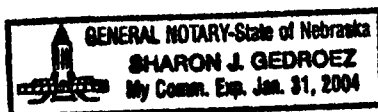
On this 16 day of May, 2002, Joseph W. McNamara, Jr. personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be his voluntary act and deed.



  
Notary Public

State of Nebraska           )  
  ) ss.  
County of Douglas         )

On this 16 day of May, 2002, Julie M. Hudkins personally appeared before me and read this Consent Order, executed the same and acknowledged the same to be her voluntary act and deed.

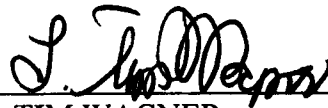


  
Notary Public

CERTIFICATION

I hereby certify that the foregoing Consent Order is adopted as the Final Order of the Nebraska Department of Insurance in the matter of State of Nebraska Department of Insurance vs. Tower Title & Escrow Company, Joseph W. McNamara, Jr., and Julie M. Hudkins, Cause No.: A-1464.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE



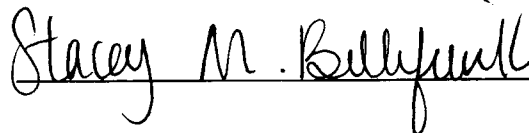
L. TIM WAGNER  
Director of Insurance

5/21/02

Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the executed Consent Order was served on Respondent Tower and Respondent Hudkins by certified mail, return receipt requested, at 450 Regency Parkway Drive, Omaha, NE 68114, and by certified mail, return receipt requested on Respondent McNamara at 13924 Gold Circle, Omaha, NE 68144 on this 22nd day of May, 2002.



RECEIVED  
MAY 22 2002  
TOWER TITLE & ESCROW CO.  
OMAHA, NE